

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

May 28, 2009

[REDACTED]
Washington DC 200

Dear [REDACTED]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-351 *et seq.* ("DC-FOIA"), dated April 29, 2009 (the "Appeal") on behalf of [REDACTED]. We forwarded the Appeal to the District of Columbia Office of the Secretary ("Office of the Secretary"), with a request for a response. On May 11, 2009, the Office of the Secretary responded. The foregoing represents the appellate record, upon which we base this decision.

Background

In your initial FOIA request, dated April 2, 2009, stated you were seeking:

- "1. Any / and all written letters, e-mails and phone records that may exist between District officials and officials with the D.C. Fire Department surrounding the once potential "donation" with "officials" in the Dominican Republic regarding a Washington, D.C. fire truck and ambulance.
2. I am also requesting any and / all written letters, e-mails and phone records that may have been exchanged between people/residents/and or officials in the Dominican Republic and D.C. officials, including those within the Washington, D.C. Fire Department regarding a Washington, D.C. fire truck and ambulance.
3. [REDACTED] is also requesting any and all internal memos and travel documentation and expenditures which may have been generated by District officials, firefighters and District Fire administrators regarding any trips/visits made by City and/or DC Fire Officials to the Dominican Republic, and in particular, to Sousa [sic], Dominican Republic.

4. [REDACTED] is also requesting any / and all documentation which may exist between D.C. City and DC fire officials and Mr. Ron Mouton [sic] and Mr. Mouton's [sic] anti-violence group, Peaceoholics – and how and who helped to generate the donation of a City fire truck and Ambulance to Sosua, Dominican Republic.”

Background

Upon receiving the FOIA request, the Office of the Secretary contacted you in an effort to narrow the scope of your FOIA request and select search terms. You and the Office of the Secretary agreed to search for records between January 1 and April 2, 2009 regarding “DC Fire and Emergency Medical Services Chief Dennis Rubin” containing the terms “Dominican Republic” and “donation” and “fire truck” or “ambulance.” Additionally you and the Office of the Secretary agreed that the agency would search for any correspondence between January 1 and April 2, 2009 belonging to DC Fire and Emergency Medical Services Chief Dennis Rubin to or from Ron Moten. The Office of the Secretary then conducted the search and recovered one document which complied with the search terms.

On appeal, you argue that the Office of the Secretary's response was “incomplete and fails on multiple levels to comply with our original request.” You request, therefore, that the Office of the Secretary conduct another search for the records and use a new and expanded set of search terms, different from the search terms you and the Office of the Secretary had previously selected. In response to your Appeal, the Office of the Secretary argues that it conducted a complete search for the records you requested. The agency argues that it performed the search based upon the search terms that you and the agency agreed upon and that your request to now use new search terms constitutes a new and separate FOIA request.

Discussion

D.C. Code §2-531 states that “the public policy in the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” *See Id.* In furtherance of this policy, D.C. Code §2-532(a-2) provides that when searching for documents pursuant to a FOIA request, a public body should make “reasonable” efforts to search for the requested records. *See Id.* However, an agency's failure to turn up specific documents does not undermine the determination that it conducted an adequate search for the requested documents. *See Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

The issue before this office is whether the search was reasonably calculated to discover the requested documents, not whether the search actually uncovered the documents requested. *SafeCard Services, Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991). I conclude that the search was reasonably conducted. After you submitted a written FOIA request seeking information pertaining to the District's donation of a fire truck and ambulance, the Office of the Secretary contacted you in an effort to narrow the search terms for your request so that a thorough search could be conducted. The Office of the Secretary did not unilaterally determine the search terms

that were used to process the FOIA request but instead sought not only your assistance but also your agreement in selecting which terms would be most appropriate to use in order to obtain the documents you were seeking. The fact that the search did not uncover the records you sought does not make the search deficient. A search is not presumed unreasonable simply because it fails to produce all relevant material. See *Doe v. D.C. Metro Dep't*, 948 A.2d 1210, 1221 (D. C. 2008) (citing *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D. C. Cir. 1990)). Furthermore, "mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a **reasonable search** for them." *Id.* (Emphasis in original). I find that the Office of the Secretary conducted a reasonable search for the records you requested and that as part of this Appeal, the agency is not obligated to perform another search using the new search terms that you have identified.

For these reasons, the decision of the Office of the Secretary is UPHeld and this appeal is DISMISSED. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,



Runako Allsopp
Deputy General Counsel
Executive Office of the Mayor

cc: Ms. Erica Easter
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